

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

SANTOS CUEVAS,

Petitioner,

v.

BRANDON KELLY,

Respondent.

Civil No. 6:18-cv-01973

**OPINION AND ORDER ON
PETITIONER'S MOTIONS TO
RECUSE MAGISTRATE JUDGE
JOLIE RUSSO AND FOR
INJUNCTIVE RELIEF**

Plaintiff Santos Cuevas moves to recuse Magistrate Judge Jolie Russo [47 and 60] and also moves for “immediate pre-injunctive relief. [60]. For the reasons given below, I deny Mr. Cuevas’s Motions.

LEGAL STANDARD

The standard for recusal under 28 U.S.C. § 144 and § 455 is “whether a reasonable person with knowledge of all the facts would conclude that the judge’s impartiality might reasonably be questioned.” *U. S. v. Nelson*, 718 F.2d 315, 321 (9th Cir. 1983); *U.S. v. McTierman*, 695 F.3d 882, 891 (9th Cir. 2012). The standard requires recusal if a reasonable third-party observer would perceive a “significant risk” that the judge would resolve the case on a basis other than the merits. *Liljeberg v. Health Serv. Acquisition Corp.*, 486 U.S. 847, 860 (1988). “The reasonable person in this context means a well-informed, thoughtful observer, as

opposed to a hypersensitive or unduly suspicious person.” *Clemens v. U.S. Dist. Court for the Central Dist. of Nevada*, 428 F.3d 1175, 1178 (9th Cir. 2005) (internal quotations and citations omitted). The goal is to avoid “even the appearance of partiality.” *Liljeberg*, 486 U.S. at 860. Generally, “questions about a judge’s impartiality must stem from ‘extrajudicial factors,’ . . . that is, from sources other than the judicial proceeding at hand. *Clemens*, 428 U.S. at 1178 (internal citations omitted).

DISCUSSION

Mr. Cuevas appears to seek to recuse Judge Russo because “this court denied preliminary injunctive relief that would meet the Interest of the Public.” [47 at 1]. He cites a class action lawsuit that he intends to file against Judge Russo, among others, as a basis for recusal. Finally, he appears to allege that recusal is warranted because Judge Russo has conspired to violate his civil rights and to obstruct justice. [60 at 2]. Even if Judge Russo¹ had denied the request for preliminary injunctive relief, this would not warrant her recusal. Generally, a judge’s actions in a case cannot raise questions about her impartiality. *Clemens*, 428 U.S. at 1178 (internal citations omitted). Moreover, Mr. Cuevas makes only conclusory, general statements about Judge Russo’s alleged bias. No reasonable third-party observer would perceive any risk, much less a “significant risk” that Judge Russo would resolve this habeas action on any basis other than the merits. *Liljeberg v. Health Serv. Acquisition Corp.*, 486 U.S. 847, 860 (1988). Accordingly, I deny the Motions to recuse Judge Russo.

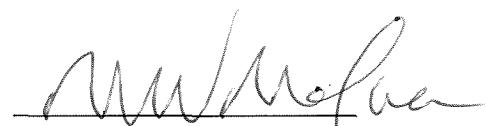
I also deny Mr. Cuevas’s request for “immediate pre-injunctive relief.” Mr. Cuevas’s Motion does not clearly specify what injunctive relief. He, therefore, cannot establish a high likelihood of success on the merits.

¹ Judge Hernandez, not Judge Russo, denied Mr. Cuevas’s motion for injunctive relief. [16].

CONCLUSION

Carefully considering Ms. Cuevas's Motions and drawing all inferences in his favor, I find the record shows no appearance of partiality. I, therefore, DENY Mr. Cuevas's Motions [47 and 60] to recuse Judge Russo and for "immediate pre-injunctive relief."

DATED this 18 day of June, 2019.



MICHAEL W. MOSMAN
Chief United States District Judge